

PROB. 12B
(7/93)

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

OCT 25 2007
at 11 o'clock and 06 min. a.m.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: JOSE CERVANTES Case Number: CR 03-00354SOM-001

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway
U.S. District Judge

Date of Original Sentence: 3/29/2004

Original Offense: Possession of an Unregistered Machine Gun, in violation of
26 U.S.C. §§ 5845(a), (b), and 5861(d), a Class C felony.

Original Sentence: Thirty (30) months imprisonment and three (3) years supervised
release with the following special conditions: 1) That the defendant
is prohibited from possessing any illegal or dangerous weapons;
2) That the defendant participate in a substance abuse program,
which may include drug testing at the discretion and direction of the
Probation Office; 3) That the defendant provide the Probation
Office access to any requested financial information; and 4) That
the defendant shall submit his person, residence, place of
employment, or vehicle to a search conducted by the U.S.
Probation Office at a reasonable time and in a reasonable manner
based upon reasonable suspicion of contraband or evidence of a
violation of a condition of supervision. Failure to submit to a search
may be grounds for revocation. The defendant shall warn any
other resident that the premises may be subject to search pursuant
to this condition.

Type of Supervision: Supervised Release Date Supervision Commenced: 9/20/2005

PETITIONING THE COURT

To modify the conditions of supervision as follows:

*General Condition: Jose Arturo Cervantes shall submit to one drug test within
the first 15 days of supervision and at least 2 tests
thereafter, not to exceed 4 tests per month.*

CAUSE

| <u>Violation Number</u> | <u>Nature of Noncompliance</u> |
|-------------------------|--------------------------------|
|-------------------------|--------------------------------|

- | | |
|----------------------|--|
| 1. General Condition | On 8/2/2007, the subject was convicted of Driving a Vehicle With an Alcohol Level of .08% or More. |
|----------------------|--|

The subject's term of supervised release commenced in the Central District of California (CD/CA) on 9/20/2005. On 8/1/2007, our office received a letter from the subject's supervising probation officer in that district requesting the above-noted modification. The letter also indicated that on 6/24/2007, the subject was arrested for Driving Under the Influence of Alcohol and Driving a Vehicle With an Alcohol Level of .08% or More in Los Angeles, California.

On 10/10/2007, the subject's supervising probation officer in the CD/CA submitted the documents related to the subject's recent arrest. According to Court documents, on 8/2/2007, the subject was convicted of Driving a Vehicle With an Alcohol Level of .08% or More in the Superior Court of California, County of Los Angeles. The remaining charge was dismissed. The subject was sentenced to three (3) years probation. Among the conditions of probation, the subject was ordered to perform seventeen (17) days of community service, complete a 6-month licensed first-offender alcohol and drug education and counseling program, pay \$100 in restitution, not drive a motor vehicle unless licensed and insured, not operate a vehicle with any measurable amount of alcohol in his blood system, not refuse to take a chemical/breath test for alcohol or drug consumption, and perform ten (10) days mandatory community labor.


Additionally at sentencing, the Court advised the subject that being under the influence of alcohol or drugs impairs his ability to safely operate a vehicle. The subject was further warned that if he continues to drive while under the influence of alcohol or drugs, and as a result of his driving, someone is killed, the subject can be charged with murder.

In light of his recent conviction, the supervising probation officer is requesting the authority to continue random drug testing outside of treatment in order to monitor the subject's compliance. On 1/1/2007, the subject completed outpatient substance abuse treatment and drug testing. The subject's substance abuse history includes use of methamphetamine and marijuana prior to his arrest for the instant offense.

Our office supports this request and respectfully recommends the Court modify the mandatory drug testing condition (General Condition) to authorize and allow random drug testing to continue for the duration of the subject's supervision term. Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

This report also serves to inform the Court that the CD/CA has requested a transfer of jurisdiction. This transfer will allow the CD/CA to move forward in the future with a violation proceeding if necessary. Should the Court concur with the request to transfer jurisdiction in this case, Your Honor's signature is requested on both originals of Probation Form 22, Transfer of Jurisdiction.

Respectfully submitted by,



ALYSA K. MAKAHANALOA
U.S. Probation Officer Assistant

Approved by:

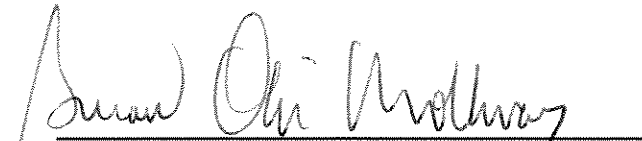


TIMOTHY M. JENKINS
Supervising U.S. Probation Officer

Date: 10/22/2007

THE COURT ORDERS:

- ☒ [X] The Modification of Conditions as Noted Above
☐ [] Other



SUSAN OKI MOLLWAY
U.S. District Judge

OCT 23 2007

Date

PROB 49
(3/89)

United States District Court

____ District _____ Hawaii _____

Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:


Jose Arturo Cervantes shall submit to one drug test within the first 15 days of supervision and at least 2 tests thereafter, not to exceed 4 tests per month.

Witness _____



U.S. Probation Officer

Signed _____



Probationer or Supervised Releasee

6-14-07

Date

NOTICE REGARDING MODIFICATION OF CONDITIONS

The defendant understands that any modification of court-ordered conditions is not a waiver of those conditions or of any consequence of violating those conditions. Violations that have preceded this or any modification of conditions may be considered by the court as a basis for revoking supervised release or probation, especially, but not only, in the event of a future violation, whether any such future violation is similar to or different from any preceding violation.

The absence of this notice does not confer, and should not be interpreted by the defendant as conferring, any rights on the defendant. The absence of this notice does not indicate, and should not be interpreted by the defendant as indicating, any position by the court or by the defendant. Even in the absence of this notice, supervised release or probation may, in the future, be revoked based on violations occurring before this or any other modification of conditions.

Agreed to and acknowledged:

Jose Cervantes

Defendant

Print Name: [Signature]

Date: 8-21-07